

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re the Application of:]
HERMES REYES CUADROS]
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Serial No: 10/525,530]
]Group Art Unit: 3673
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Filed: February 24, 2005]Examiner: J. Liu
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For: NEW STRUCTURE FOR A]Attorney Docket: 05019
<u>MATTRESS WITH VENTILATION</u>]

Appeal No:_____

Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

APPELLANT'S BRIEF ON APPEAL

I. REAL PARTY IN INTEREST

The real party in interest is the inventor.

II. RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences.

III. STATUS OF CLAIMS

Claims 5, 7 and 9 are in the application, are under rejection and are being appealed.

Claims 1-4, 6 and 8 have been canceled.

IV. STATUS OF AMENDMENTS

There are no outstanding amendments.

V. SUMMARY OF CLAIMED SUBJECT MATTER

The invention is directed to a symmetric (Fig. 2; [0015]) mattress, comprising a central metallic spring unit (15), having opposite faces on each of which is disposed, in sequence, as shown in Fig. 2, a first sisal layer (14), a natural cotton layer (13), a second sisal layer (14), a natural latex or rubber layer having a plurality of perforations therethrough (12), and an outer textile padded layer sewn to the natural latex or rubber layer (11) ([0009]-[0014]). A second natural latex or rubber layer (12) overlapped with the natural latex or rubber layer may also be present ([0010]).

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Whether claims 5, 7 and 9 are obvious under 35 USC 103(a) over US 2,471,125 to Sohn et al in view of US 3,255,469 to Blecker et al.

VII. ARGUMENT

The sole rejection is based upon the allegation that Sohn et al teaches a mattress comprising a central spring unit 10, on which is disposed a first sisal layer 12, a cotton layer 15, a perforated plastic layer 17 and an outer textile padding 18.

The invention differs from Sohn et al in that the mattress is symmetric, includes perforated rubber or latex layers, and includes second sisal layers.

To take account of these differences, the rejection takes the position that it would have been obvious to substitute the plastic layer of Sohn et al with the rubber layer of Blecker et al to provide an alternative cushioning

material known in the art, and that symmetry and the use of a second sisal layer are routine in the art.

This analysis ignores the fundamental requirements of Sohn et al.

Sohn et al teaches, at col. 1, lines 36-50, a mattress "having a rigid or resiliently pliable board or equivalent structure incorporated *in one side only* thereof, so that the mattress has a firm side and a soft side of conventional inner-spring construction, either side being usable as desired... and has the bed board or equivalent structure permanently incorporated therein to eliminate the necessity of storing the board when not in use..." (emphasis added)

With reference to Fig. 1 of Sohn et al, the lower side of the mattress includes a sisal-type layer 12, an outer cotton pad 13 and a covering 14.

The upper side of the mattress is, however, substantially different. Although the inner layer is a sisal-type layer 12, the subsequent layers are a fabric layer 15, a bed board 17, an outer pad 18 and a covering layer 19.

This bed board 17, as disclosed at col. 2, lines 41-47, may be formed of a piece of plywood, sheet of metal such as aluminum or iron, or a sheet of synthetic resin. It is very clear from the disclosure that this bed board layer is *rigid*; that is the very point of including such a layer within the mattress. This layer is described as a "stiffening member" in the first paragraph of the specification.

Thus, it is fundamental according to Sohn et al, that the mattress *not be symmetrical*, and that one side of the mattress include a rigidifying member.

The rejection makes the argument that symmetry is well known in the art, as evidenced by Blecker et al. While

Appellant agrees that symmetry in the mattress art is well known, the question here is not whether it is well known, but rather what is taught by the primary reference. Sohn et al clearly teaches *against* symmetry, stating specifically that it is "among the objects of the invention to provide an improved inner-spring mattress having a rigid or resiliently pliable board or equivalent structure incorporated in one side only thereof, so that the mattress has a firm side and a soft side of conventional inner-spring construction, either side being usable as may be desired..." (column 1, lines 36-42). It is therefore unquestionable that Sohn et al teaches away from the construction of the claimed invention; even though symmetric construction was clearly known at the time of the Sohn et al reference, Sohn et al teaches against using it. If one bases a mattress construction upon the teachings of Sohn et al, such mattress construction will clearly not be symmetrical.

The rejection further alleges that it would have been obvious to replace the "plastic" layer of Sohn et al with a rubber layer as taught by Blecker et al. The rubber layer of Blecker et al, however, is a "pneumatic integral foam sheet comprised of predominantly closed cells" (col. 1, lines 51-53), and there is no evidence that this is anything but a resilient foam layer.

Regarding the substitution of the rubber layer of Blecker et al for the rigid layer of Sohn et al, the rejection states that "it is noted that Sohn et al *only* require a resiliently pliable member (col 1, line 38). Thus, Bleckers' 'rubber pad' (col 2, line 26) clearly meets this limitation of being resiliently pliable."

It first must be noted that in describing the board used

as "rigid or resiliently pliable," Sohn et al appears to be inherently contradictory, because "rigid" and "resilient" are substantially contradictory terms. "Rigid" implies that the board used is unyielding while "resilient" implies that the board does yield, but springs back to shape after yielding. However, if one reads Sohn et al as a whole, it is clear that a rigid material is what is intended, with Sohn et al disclosing "plywood or similar material" at column 1, line 12, and further stating that the invention aims to provide a "soft and rigid mattress, one side of which may be used to rigidly support a person having an injured or ailing back" at column 1, lines 30-33. The typical materials set forth for this bed board are plywood, sheet metal or a sheet of synthetic resin plastic which may be apertured or stamped to reduce its weight "while retaining the desired degree of rigidity."

It is clear from considering Sohn et al as a whole that the object is to provide a mattress in which one side is more rigid than the other side, and that rigidity is far more important than resiliency in terms of selecting the material for the bed board. The question is therefore whether the materials used by Blecker et al would fulfill the requirements of Sohn et al.

Appellant believes that the key to the consideration of Blecker et al lies in the discussion at column 2, lines 50-54, in which it is stated that "[a] further essential characteristic of the foams to be employed in the structures of this invention is that they be yieldable, i.e. resilient such that substantial deformation occurs upon application of mechanical pressure... [f]oams which do not compress to that extent are generally too rigid and hence do not afford a

sufficient degree of resiliency."

Blecker et al thus teaches away from rigidity, and in favor of compressibility in selecting the foams to be used in the mattress of that invention. Sohn et al teaches just the opposite, that the bed board should be constructed of a material which is primarily rigid to satisfy the purposes of the Sohn et al invention. While rigidity and resiliency may be relative terms, and any material may found along a continuum between the two terms, it is clear that the emphasis of Sohn et al is on rigidity while the emphasis in Blecker et al is in compressibility.

Accordingly, one of ordinary skill in the art would not select a *foam* material such as is disclosed by Blecker et al as a bed board in the mattress of Sohn et al since such a material would not provide the kind of adequate support necessary and would not function as a "bed board."

Reversal of the rejection of record is requested.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Ira J. Schultz", with a stylized flourish at the end.

Ira J. Schultz
Registration No. 28666
Attorney for Appellant
(703)837-9600, ext. 23

VIII. CLAIMS APPENDIX

5. A symmetric mattress, comprising a central metallic spring unit, having opposite faces on each of which is disposed, in sequence;

a first sisal layer;

a natural cotton layer;

a second sisal layer;

a natural latex or rubber layer having a plurality of perforations therethrough; and

an outer textile padded layer sewn to the natural latex or rubber layer.

7. Mattress according to claim 5, wherein the components make up a ventilated unit dissipating heat, with an ergonomic fitting made up by the natural latex and the metallic spring unit in combination.

9. Mattress according to claim 5, additionally comprising a second perforated natural latex or rubber layer adjacent said perforated natural latex or rubber layer.

IX. EVIDENCE APPENDIX

None.

X. RELATED PROCEEDINGS APPENDIX

None.